

CHAPTER 144C

FINAL DISPOSITION ACT

Referred to in §142.1, 144B.1, 144B.5

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144C.1 Short title.

This chapter may be cited as the “*Final Disposition Act*”.

2008 Acts, ch 1051, §6, 22

144C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Adult*” means a person who is married or who is eighteen years of age or older.
2. “*Adult day services program*” means adult day services program as defined in section 231D.1.
3. “*Assisted living program*” means an assisted living program under chapter 231C.
4. “*Ceremony*” means a formal act or set of formal acts established by custom or authority to commemorate a decedent.
5. “*Child*” means a son or daughter of a person, whether by birth or adoption.
6. “*Decedent*” means a deceased adult.
7. “*Declarant*” means a competent adult who executes a declaration pursuant to this chapter.
8. “*Declaration*” means a written instrument, contained in or attached to a durable power of attorney for health care under chapter 144B, that is executed by a declarant in accordance with the requirements of this chapter, and that names a designee who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains and the ceremonies planned after the declarant's death.
9. “*Designee*” means a competent adult designated under a declaration who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains and the ceremonies planned after the declarant's death.
10. “*Elder group home*” means elder group home as defined in section 231B.1.
11. “*Final disposition*” means the burial, interment, cremation, removal from the state, or other disposition of remains.
12. “*Health care facility*” means health care facility as defined in section 135C.1.
13. “*Health care provider*” means health care provider as defined in section 144A.2.
14. “*Hospital*” means hospital as defined in section 135B.1.
15. “*Interested person*” means a decedent's spouse, parent, grandparent, adult child, adult sibling, adult grandchild, or a designee.
16. “*Licensed hospice program*” means a licensed hospice program as defined in section 135J.1.
17. “*Reasonable under the circumstances*” means consideration of what is appropriate in relation to the declarant's finances, cultural or family customs, and religious or spiritual beliefs. “*Reasonable under the circumstances*” may include but is not limited to consideration of the declarant's preneed funeral, burial, or cremation plan, and known or reasonably ascertainable creditors of the declarant.
18. “*Remains*” means the body or cremated remains of a decedent.
19. a. “*Third party*” means a person who is requested to dispose of remains by an adult with the right to dispose of a decedent's remains under section 144C.5 or assist with arrangements for ceremonies planned after the declarant's death.
- b. “*Third party*” includes but is not limited to a funeral director, funeral establishment,

cremation establishment, cemetery, the state medical examiner, or a county medical examiner.

2008 Acts, ch 1051, §7, 22; 2009 Acts, ch 133, §45

144C.3 Declaration — designee.

1. A declaration shall name a designee who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains and the ceremonies planned after the declarant's death. A declaration may name one or more alternate designees and may include contact information for the designees and alternate designees.

2. A declaration shall not include directives for final disposition of the declarant's remains and shall not include arrangements for ceremonies planned after the declarant's death.

3. A designee, an alternate designee, and a third party shall act in good faith and in a manner that is reasonable under the circumstances.

4. A funeral director, an attorney, or any agent, owner, or employee of a funeral establishment, cremation establishment, cemetery, elder group home, assisted living program, adult day services program, or licensed hospice program shall not serve as a designee unless related to the declarant within the third degree of consanguinity.

5. This section shall not be construed to permit a person who is not licensed pursuant to chapter 156 to make funeral arrangements.

2008 Acts, ch 1051, §8, 22; 2008 Acts, ch 1191, §124; 2009 Acts, ch 133, §46

144C.4 Reliance — immunities.

1. A designee or third party who relies in good faith on a declaration is not subject to civil liability or to criminal prosecution or professional disciplinary action to any greater extent than if the designee or third party dealt directly with the declarant as a fully competent and living person.

2. A designee or third party who relies in good faith on a declaration may presume, in the absence of actual knowledge to the contrary, all of the following:

a. That the declaration was validly executed.

b. That the declarant was competent at the time the declaration was executed.

3. A third party who relies in good faith on a declaration is not subject to civil or criminal liability for the proper application of property delivered or surrendered in compliance with decisions made by the designee including but not limited to trust funds held pursuant to chapter 523A.

4. A third party who has reasonable cause to question the authenticity or validity of a declaration may promptly and reasonably seek additional information from the person proffering the declaration or from other persons to verify the declaration.

5. The state medical examiner or a county medical examiner shall not be subject to civil liability or to criminal prosecution or professional disciplinary action for releasing a decedent's remains to a person who is not a designee or alternate designee.

6. This section shall not be construed to impair any contractual obligations of a designee or third party incurred in fulfillment of a declaration.

2008 Acts, ch 1051, §9, 22

144C.5 Final disposition of remains — right to control.

1. The right to control final disposition of a decedent's remains or to make arrangements for the ceremony after a decedent's death vests in and devolves upon the following persons who are competent adults at the time of the decedent's death, in the following order:

a. A designee, or alternate designee, acting pursuant to the decedent's declaration.

b. The surviving spouse of the decedent, if not legally separated from the decedent, whose whereabouts is reasonably ascertainable.

c. A surviving child of the decedent, or, if there is more than one, a majority of the surviving children whose whereabouts are reasonably ascertainable.

d. The surviving parents of the decedent whose whereabouts are reasonably ascertainable.

e. A surviving grandchild of the decedent, or, if there is more than one, a majority of the surviving grandchildren whose whereabouts are reasonably ascertainable.

f. A surviving sibling of the decedent, or, if there is more than one, a majority of the surviving siblings whose whereabouts are reasonably ascertainable.

g. A surviving grandparent of the decedent, or, if there is more than one, a majority of the surviving grandparents whose whereabouts are reasonably ascertainable.

h. A person in the next degree of kinship to the decedent in the order named by law to inherit the estate of the decedent under the rules of inheritance for intestate succession or, if there is more than one, a majority of such surviving persons whose whereabouts are reasonably ascertainable.

i. A person who represents that the person knows the identity of the decedent and who signs an affidavit warranting the identity of the decedent and assuming the right to control final disposition of the decedent's remains and the responsibility to pay any expense attendant to such final disposition. A person who warrants the identity of the decedent pursuant to this paragraph is liable for all damages that result, directly or indirectly, from that warrant.

j. The county medical examiner, if responsible for the decedent's remains.

2. A third party may rely upon the directives of a person who represents that the person is a member of a class of persons described in subsection 1, paragraph "c", "e", "f", "g", or "h", and who signs an affidavit stating that all other members of the class, whose whereabouts are reasonably ascertainable, have been notified of the decedent's death and the person has received the assent of a majority of those members of that class of persons to control final disposition of the decedent's remains and to make arrangements for the performance of a ceremony for the decedent.

3. A third party may await a court order before proceeding with final disposition of a decedent's remains or arrangements for the performance of a ceremony for a decedent if the third party is aware of a dispute among persons who are members of the same class of persons described in subsection 1, or of a dispute between persons who are authorized under subsection 1 and the executor named in a decedent's will or a personal representative appointed by the court.

2008 Acts, ch 1051, §10, 22

Referred to in §142.1, 144.34, 144.56, 144C.2, 144C.8, 331.802, 331.804, 331.805, 523I.309

[SP] Section applies to all deaths occurring on or after July 1, 2008, except that subsection 1, paragraph a, applies only to a designee or alternate designee designated in a declaration that is executed on or after July 1, 2008; 2008 Acts, ch 1051, §22

144C.6 Declaration of designee — form — requirements.

1. A declaration executed pursuant to this chapter may but need not be in the following form:

I hereby designate as my designee. My designee shall have the sole responsibility for making decisions concerning the final disposition of my remains and the ceremonies to be performed after my death. This declaration hereby revokes all prior declarations. This designation becomes effective upon my death.

My designee shall act in a manner that is reasonable under the circumstances.

I may revoke or amend this declaration at any time. I agree that a third party (such as a funeral or cremation establishment, funeral director, or cemetery) who receives a copy of this declaration may act in reliance on it. Revocation of this declaration is not effective as to a third party until the third party receives notice of the revocation. My estate shall indemnify my designee and any third party for costs incurred by them or claims arising against them as a result of their good faith reliance on this declaration.

I execute this declaration as my free and voluntary act.

2. A declaration executed pursuant to this chapter shall be in a written form that substantially complies with the form in subsection 1, is properly completed, is contained in or attached to a durable power of attorney for health care under chapter 144B, and is dated and signed by the declarant or another person acting on the declarant's behalf at the direction of and in the presence of the declarant. In addition, a declaration shall be either of the following:

a. Signed by at least two individuals who are not named therein and who, in the presence of each other and the declarant, witnessed the signing of the declaration by the declarant, or another person acting on the declarant's behalf at the direction of and in the presence of the declarant, and witnessed the signing of the declaration by each other.

b. Acknowledged before a notarial officer as provided in chapter 9B.

3. A declaration may include the location of an agreement for prearranged funeral services or funeral merchandise as defined in and executed under chapter 523A, cemetery lots owned by or reserved for the declarant, and special instructions regarding organ donation consistent with chapter 142C.

4. A declaration for disposition of remains made by a service member who died while performing military duty as defined in section 29A.1, subsection 3, 8, or 12, on forms provided and authorized by the department of defense for service members for this purpose shall constitute a valid declaration of designee for purposes of this chapter.

2008 Acts, ch 1051, §11, 22; 2010 Acts, ch 1170, §3; 2011 Acts, ch 47, §8; 2012 Acts, ch 1050, §39, 60; 2012 Acts, ch 1072, §33

144C.7 Revocation of declaration.

1. A declaration is revocable by a declarant in a writing signed and dated by the declarant.

2. Unless otherwise expressly provided in a declaration:

a. A dissolution of marriage, annulment of marriage, or legal separation between the declarant and the declarant's spouse that occurs subsequent to the execution of the declaration constitutes an automatic revocation of the spouse as a designee.

b. A designation of a person as a designee pursuant to a declaration is ineffective if the designation is revoked by the declarant in writing subsequent to the execution of the declaration or if the designee is unable or unwilling to serve as the designee.

2008 Acts, ch 1051, §12, 22

144C.8 Forfeiture of designee's authority.

A designee shall forfeit all rights and authority under a declaration and all rights and authority under the declaration shall vest in and devolve upon an alternate designee, or if there is none, vest in and devolve pursuant to section 144C.5, under either of the following circumstances:

1. The designee is charged with murder in the first or second degree or voluntary manslaughter in connection with the declarant's death and those charges are known to a third party.

2. The designee does not exercise the designee's authority under the declaration within twenty-four hours of receiving notification of the death of the declarant or within forty hours of the declarant's death, whichever is earlier.

2008 Acts, ch 1051, §13, 22

144C.9 Interstate effect of declaration.

Unless otherwise expressly provided in a declaration:

1. It is presumed that the declarant intended to have a declaration executed pursuant to this chapter have the full force and effect of law in any state of the United States, the District of Columbia, and any other territorial possessions of the United States.

2. A declaration or similar instrument executed in another state that complies with the requirements of this chapter may be relied upon, in good faith, by the designee, an alternate designee, and a third party in this state so long as the declaration is not invalid, illegal, or unconstitutional in this state.

2008 Acts, ch 1051, §14, 22

144C.10 Effect of declaration.

1. The designee designated in a declaration shall have the sole discretion pursuant to the declaration to determine what final disposition of the declarant's remains and ceremonies to be performed after the declarant's death are reasonable under the circumstances.

2. The most recent declaration executed by a declarant shall control.

3. This chapter does not prohibit a person from conducting a separate ceremony to commemorate a declarant, at the person's expense, to assist in the bereavement process.

4. The rights of a donee created by an anatomical gift pursuant to chapter 142C are superior to the authority of a designee under a declaration executed pursuant to this chapter.

2008 Acts, ch 1051, §15, 22; 2010 Acts, ch 1032, §1

144C.11 Practice of mortuary science.

This chapter shall not be construed to authorize the unlicensed practice of mortuary science as provided in chapter 156.

2008 Acts, ch 1051, §16, 22